

ANDERSON EXHIBIT 13

Garvin-Senger

0001

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF MASSACHUSETTS
3 VEN-A-CARE OF THE FLORIDA)
4 KEYS, INC.,)
5 Plaintiff,) No. 07 CV 11618
6 vs) PBS
7 ABBOTT LABORATORIES, INC.)
8 Defendant.)
9 The discovery deposition of BETH
10 SENGHER, taken in the above-entitled cause before
11 Steven J. Brickey, CSR, State of Illinois, at 77
12 West Wacker Drive, Chicago, Illinois, on the 17th
13 day of December, A.D., 2008, scheduled to commence
14 at 9:00 o'clock a.m.
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21 LA. REPORTING, INC. (312) 419-9292
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0002

1 A P P E A R A N C E S:

2 ANDERSON, LLC
3 BY: MR. C. JARRETT ANDERSON
4 208 West 14th Street
5 Suite 203
6 Austin, Texas 78701
7 (512) 469-9191

8 Appeared on behalf of the Plaintiff,
9 Ven-a-Care of the Florida Keys.

10 WINGET-HERNANDEZ, LLC
11 BY: MICHAEL WINGET-HERNANDEZ
12 101 South College Street
13 Dripping Springs, Texas 78620
14 (512) 858-4181

15 Appeared on behalf of the Plaintiff
16 Ven-a-Care of Wisconsin, Illinois,
17 Kentucky, Idaho, Alabama, Hawaii and
18 South Carolina.

19 JONES DAY
20 BY: MR. ERIC P. BERLIN
21 77 West Wacker Drive
22 Suite 3500
23 Chicago, Illinois 60601
24 (312) 782-3939,

25 Appeared on behalf of the Defendant
26 Abbott Laboratories, Inc.

27 REPORTED BY:

Garvin-Senger

11 ma'am, and if you didn't have a perception then
12 I'll understand, but did you have a perception
13 that other drug companies were billing wholesalers
14 at their published WAC prices for their drugs?

15 A. I don't think I ever took the time
16 to consider that.

17 Q. Okay. Let me ask you about a
18 different pricing term. Were you aware of a
19 pricing term known as AWP?

20 A. Yes.

21 Q. And what does that mean?

22 A. I believe it stands for average
23 wholesaler price.

24 Q. Other than the plain words, average

0046

1 wholesaler price, did you have any understanding
2 of the meaning of the term?

3 A. It was a price that was set by First
4 Data Bank and used for reimbursement purposes.

5 Q. For Abbott drugs, how was it set by
6 First Data Bank?

7 MR. BERLIN: Objection. Form.
8 BY THE WITNESS:

9 A. It was really up to First Data Bank
10 how they set it, but it was referenced to our WAC
11 price and I think it depended -- I think they may
12 have actually changed their relationship. I'm not
13 sure because I was in the pricing department for
14 five years so I can't say how long the
15 relationship has been held, but I think at the
16 time I was there, AWP was 125 percent of WAC on
17 our products.

18 BY MR. ANDERSON:

19 Q. Yes. At least in your experience at
20 Abbott, you understood that AWP's were being
21 published by First Data Bank, which reflected a 25
22 percent markup from Abbott's published WAC price,
23 correct?

24 A. Yes.

0047

1 Q. And that held true for all of the
2 drug products that you were working with at PPD,
3 correct?

4 A. I believe so, yes.

5 Q. Including the brand products that
6 were marketed and promoted to physicians as well
7 as the multisource products such as the
8 Erythromycins?

9 A. Yes.

10 Q. Did you understand that if Abbott
11 reported a change in a WAC price, then, in turn,
12 there would be a change in the published AWP
13 price?

14 A. Yes.

15 Q. Did you feel like that connection
16 was a secret at PPD?

17 A. No.

18 Q. Did others in PPD understand that?

19 MR. BERLIN: Objection. Form.
20 Foundation.

21 BY THE WITNESS:

22 A. In the pricing group, I would say
23 that that was a general understanding.

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0048

1 BY MR. ANDERSON:

2 Q. Did you have access to First Data
3 Bank pricing?

4 A. Yes.

5 Q. How?

6 A. We purchased the data from First
7 Data Bank and it was made available to the people
8 in pricing.

9 Q. How many people roughly?

10 A. I think at that time we bought CD's
11 so anybody could -- in the pricing department
12 could go to the library and look at the CD's.

13 Q. I understand. How many people were
14 in the pricing department roughly, 50?

15 A. Roughly.

16 Q. Okay. And was there a particular
17 computer terminal in the library that held the
18 First Data Bank information?

19 A. It was a CD so you could use
20 whatever computer you wanted as long as you had
21 the CD.

22 Q. I see. Go to the library, check out
23 the CD's, then go put them in your computer and
24 you could access the First Data Bank information.

0049

1 A. As long as you had the CD, yes.

2 Q. Right. Did you understand that
3 those CD's were updated on a particular basis?

4 A. They were definitely updated. I
5 don't recall exactly, but I think it was probably
6 every month.

7 Q. Were you familiar with a product
8 that First Data Bank offered known as Price Probe?

9 A. Yes.

10 Q. Did you have access to Price Probe
11 as well?

12 A. Yes.

13 Q. Was Price Probe separate from the
14 CD?

15 A. I think the Price Probe may have
16 been the actual software and then the CD's were
17 updates with the data.

18 Q. Did you have Price Probe on your
19 computer or was that on one particular terminal?

20 A. That may have been on the computer
21 in the library. I don't remember exactly at this
22 point, but I think that's probably why we had to
23 go there.

24 Q. Okay. Do you recall looking at

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1 First Data Bank information on your own computer
2 and when I say own, I mean the computer that was
3 at your workstation at Abbott?

4 A. I don't recall exactly, but if there
5 were improvements in the time I was there, I'm not
6 sure how widely available it was. Since then, I
7 think they've made improvements where they don't
8 send out the CD's anymore so it is possible.

9 Q. What purposes did you -- Strike
10 that. I'll rephrase. Why did you sometimes
11 access the First Data Bank pricing?

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9 507, appear to you to be slides from a Power Point
10 presentation that was part of the training process
11 at pricing and planning?

12 A. Let me continue reading through it
13 first.

14 Q. Sure. While you review that, why
15 don't we go ahead and change the tapes?

16 MR. BERLIN: Except I'm not going to
17 agree to that. Sorry.

18 MR. ANDERSON: Okay. Then we have
19 five minutes.

20 THE WITNESS: Okay.

21 BY MR. ANDERSON:

22 Q. Okay. Does this look like a
23 training document?

24 A. Yes.

0099

1 Q. And was this utilized in training
2 personnel within pricing and planning at Abbott
3 PPD?

4 A. I don't know about this specific
5 one. I don't recall being at this one, especially
6 since my name isn't on it, but, in general,
7 something like this was used.

8 Q. Utilizing similar, if not, identical
9 slides, correct?

10 A. I can't speak to identical. We
11 definitely changed presentations throughout the
12 times that I was in pricing. Different managers
13 had different responsibilities. So they would put
14 their own take on things.

15 Q. How often were training
16 presentations presented?

17 A. I think probably once or twice a
18 year.

19 Q. Who normally presented them?

20 A. Generally, they tried to share the
21 responsibility and whoever was the manager in
22 charge of the area would do the presentation.

23 Q. Who was the manager in charge of
24 managed health care contracting?

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1 A. At that point?

2 Q. Yes. Back in 2001.

3 A. The slide says Joe Miller was in
4 charge of national accounts and that seems like a
5 good -- I think he was.

6 Q. I see. And you're pointing to the
7 slide that's titled pricing and contracting as it
8 looks like a work chart?

9 A. Yes.

10 Q. And I notice there's -- to the left
11 of Mr. Miller is Debra DeYoung, correct?

12 A. Yes.

13 Q. And then positions underneath her
14 that reported to her, correct?

15 A. Yes.

16 Q. And then there's one that's opened
17 entitled senior pricing analyst, correct?

18 A. Yes.

19 Q. That's the position that you
20 actually filled sometime in September of 2001,
21 correct?

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22 A. That was actually in 2003. The one
23 in 2001 was actually an extra head count. So it
24 didn't even show up under this one yet, but this

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1 institutional one is the one I went to after my
2 government job.

3 Q. Okay. I see. So there was yet
4 another open position that's just not shown on
5 this work chart?

6 A. Right.

7 Q. That you initially filled in 2001?

8 A. Yes.

9 Q. And then, subsequently, you came to
10 fill the -- in 2003, the position that is shown as
11 open?

12 A. Correct.

13 MR. ANDERSON: We need to change the
14 tape.

15 THE WITNESS: Okay.

16 (Whereupon, a break was taken
17 after which the following
18 proceedings were had.)

19 BY MR. ANDERSON:

20 Q. Ma'am, if you could take a look at
21 the first page of Garvin Exhibit 4, also marked as
22 Exhibit 507, and in the lower right-hand corner of
23 the first page you see a slide there titled price
24 definitions?

0102

1 A. Yes.

2 Q. And reading the one for AWP it
3 reads, quote, average wholesale price estimated at
4 125 percent of WAC by First Data Bank for most
5 Abbott products, did I read that correctly?

6 A. Yes.

7 Q. Is that consistent with your
8 understanding of how AWP's were published for
9 Abbott drugs?

10 A. Yes.

11 Q. And then continuing on it reads
12 "used as a reimbursement reference for retail
13 pharmacy," did I read that correctly?

14 A. Yes.

15 Q. Did you and others in Abbott PPD
16 know that AWP was used for reimbursement?

17 MR. BERLIN: Objection. Form.
18 Foundation.

19 BY THE WITNESS:

20 A. Yes.

21 BY MR. ANDERSON:

22 Q. Were you trained on the fact that
23 AWP was used in reimbursement or did you just sort
24 of learn as a matter of course?

0103

1 MR. BERLIN: Objection. Form.

2 BY THE WITNESS:

3 A. I remember -- I don't remember.
4 There were training sessions that I went to and I
5 remember AWP being discussed pretty much in this
6 context the way that you read it.

7 BY MR. ANDERSON:

8 Q. Okay. And you're indicating the
9 language that's on Exhibit 4, correct?